

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PATH AMERICA, LLC; PATH AMERICA
SNOCO LLC; PATH AMERICA
FARMER'S MARKET, LP; PATH
AMERICA KINGCO LLC; PATH
AMERICA TOWER, LP; PATH TOWER
SEATTLE, LP; POTALA TOWER
SEATTLE, LLC; and LOBSANG
DARGEY,

Defendants, and

POTALA SHORELINE, LLC; and
POTALA VILLAGE KIRKLAND, LLC,

Relief Defendants.

Case No. 2:15-cv-01350-JLR

FOURTH STIPULATION AND
~~PROPOSED~~ ORDER MODIFYING
TEMPORARY RESTRAINING ORDER

NOTED FOR CONSIDERATION:
September 18, 2015

STIPULATION

WHEREAS, on August 24, 2015 at 4:15 p.m., pursuant to the motion of plaintiff Securities and Exchange Commission (the "Commission"), the Court issued a Temporary Restraining Order and Order Granting Other Ancillary Relief (the "TRO") [Dkt. no. 9],

WHEREAS, Section VI. of the TRO freezes the monies and assets, *inter alia*, held in

FOURTH STIPULATION AND
[PROPOSED] ORDER MODIFYING TRO
2:15-cv-01350-JLR

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1 the name of or for the benefit of, or over which account authority is held by Defendants,

2 WHEREAS, Section VI. of the TRO freezes those monies and assets that constitute or
3 are derived from the proceeds of, and are otherwise related to, the activities set forth in the
4 Complaint in accounts at any bank, financial institution or brokerage firm, *inter alia*, held in
5 the name of or for the benefit of, or over which account authority is held by Relief Defendants,

6 WHEREAS, Defendants, Relief Defendants, and affiliates of Defendants delivered
7 checks for payment of supplies, goods and services before the issuance of the TRO on August
8 24, 2015 that were presented by payees for payment after the issuance of the TRO and
9 payment was denied due to the freeze on affected bank accounts, and it is appropriate to allow
10 payment for such previously owing goods and services as identified in the order below,

11 WHEREAS, Defendants, Relief Defendants, and affiliates of Defendants contracted for
12 delivery of and/or obtained supplies, goods and services before August 24, 2015, and have
13 received invoices for amounts due and owing on account of such arrangements, and it is
14 appropriate to allow payment for such previously owing goods and services as identified in the
15 order below,

16 WHEREAS, Dargey Development, an affiliate of Defendants, has provided services to
17 Defendants and Relief Defendants and owes a Business and Occupation tax in the amount of
18 \$5,111.10, and it is appropriate to allow payment for such tax,

19 WHEREAS, Dargey Development, Path America, AMDO Construction, Potala Farms,
20 and Everett Public Market Building owe payroll and payroll taxes for the period September 1,
21 2015 to September 15, 2015, as reflected on Schedule 1 to this Stipulation and in the Order;
22 these payments are subject to return or clawback if later deemed appropriate by the Court,

23 WHEREAS, the TRO has ordered Defendant Path America LLC to prepare and deliver
24 to the Commission a detailed and complete accounting as more fully described in Section IX.,
25 Path America LLC lacks employees or regular outside accountants with the capability to
26 perform the accounting, so in order to comply with the Court's order, Path America LLC has
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1 retained Navigant Consulting to assist the staff of affiliates to perform such accounting for the
2 budgeted amount of \$150,000.00,

3 WHEREAS third parties continue to make payments to Defendants and their affiliated
4 companies but the deposit of such checks into appropriate accounts has been blocked by the
5 freeze order in the TRO,

6 WHEREAS, the Dargey family has made a request that the Commission approve a
7 monthly stipend to pay for their reasonable and necessary living expenses notwithstanding the
8 freeze on the funds and assets of Lobsang Dargey, and after review of information submitted
9 by the Dargey family to document their expenses, the Commission has agreed to an amount of
10 \$9,634.81 for their living expenses, based upon their current income and expenses,

11 WHEREAS, the Dargeys have control over a cashiers' check in the amount of
12 \$100,000, currently maintained by their counsel, and such check is to be deposited into the
13 Bank of America account of Lobsang Dargey (XXXX1856) to provide funds for the family's
14 personal expenses as described in the preceding paragraph,

15 WHEREAS, the Commission and Defendants have conferred in good faith and have
16 agreed that there is good cause to modify the TRO to allow payment for the specific items as
17 scheduled and in the amounts set forth in the order below,

18 THEREFORE the Commission, Defendants and Relief Defendants, by and through
19 their undersigned counsel, hereby stipulate and agree that Section VI. and VII. of the TRO
20 shall be modified to allow for payments as further set out in the Proposed Order, attached
21 hereto for presentation.

1 **STIPULATED AND AGREED TO BY:**

2 Dated September 18, 2015

ORRICK, HERRINGTON & SUTCLIFFE LLP

3 *s/Daniel J. Dunne*

s/George E. Greer

4 By: *s/David S. Keenan*

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10 *Attorneys for Defendants and Relief Defendants*

11
12 Dated September 18, 2015

SECURITIES AND EXCHANGE COMMISSION

13
14 *s/Susan F. LaMarca*

By: *s/Bernard B. Smyth*

15 Susan F. LaMarca

16 Bernard B. Smyth

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20 *Attorneys for Plaintiff*

Securities and Exchange Commission

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FOURTH STIPULATION AND
[PROPOSED] ORDER MODIFYING TRO:
2:15-cv-01350-JLR

ORDER

Based upon the Stipulation, good cause appearing, and pending further orders, IT IS ORDERED that:

1. Sections VI. and VII. of the TRO shall be modified to allow for the payments specified below:

Payee	Amount	Account To Drawn From
Potala Tower Seattle		
Ricca Design	\$777.00	Potala Tower Seattle East West Bank XXXXXX2490
Ricca Design	\$30.80	Potala Tower Seattle East West Bank XXXXXX2490
McCullough Hill Leary	\$11,938.00	Potala Tower Seattle East West Bank XXXXXX2490
Golder Associates	\$51,637.06	Potala Tower Seattle East West Bank XXXXXX2490
Greenwood Hospitality	\$10,000.00	Potala Tower Seattle East West Bank XXXXXX2490
Fairchild	\$204.00	Potala Tower Seattle East West Bank XXXXXX2490
Integrity Safety Services	\$400.00	Potala Tower Seattle East West Bank XXXXXX2490
United Way (escrow payment for FAR)	\$8,700.00	Potala Tower Seattle East West Bank XXXXXX2490
Seattle Department of Transportation	\$559.00	Potala Tower Seattle East West Bank XXXXXX2490
Morrison Hershfield	\$51,137.64	Potala Tower Seattle East West Bank XXXXXX2490
City of Seattle	\$3,080.00	Potala Tower Seattle East West Bank XXXXXX2490

Payee	Amount	Account To Drawn From
Ascent Law Group	\$129,400.95	Potala Tower Seattle East West Bank XXXXXX2490
Central Escrow	\$1,865.00	Potala Tower Seattle East West Bank XXXXXX2490
CCI	\$7,781.32	Potala Tower Seattle East West Bank XXXXXX2490
CKC	\$15,370.25	Potala Tower Seattle East West Bank XXXXXX2490
Permit Consultants NW	\$1,612.5	Potala Tower Seattle East West Bank XXXXXX2490
City of Seattle	\$3,600.00	Potala Tower Seattle East West Bank XXXXXX2490
Johnson Construction	\$390.00	Potala Tower Seattle East West Bank XXXXXX2490
K&L Gates	\$14,636.50	Potala Tower Seattle East West Bank XXXXXX2490
Morrison Hershfield	\$3,836.30	Potala Tower Seattle East West Bank XXXXXX2490
Studio Lux	\$1,445.00	Potala Tower Seattle East West Bank XXXXXX2490
Path America Farmers Market		
Columbia Resource Group, LLC	\$5,709.00	Path America Farmers Market, LP East West Bank XXXXXX3663
Fuller Sears Architect	\$656.56	Path America Farmers Market, LP East West Bank XXXXXX3663
Chicago Title	\$409.50	Path America Farmers Market, LP East West Bank XXXXXX3663

Payee	Amount	Account To Drawn From
Parker Smith and Feek	\$16,400.00	Path America Farmers Market, LP East West Bank XXXXXX3663
Marshall and Catherine Cymbaluk Family, LLC	\$10,500.00	Path America Farmers Market, LP East West Bank XXXXXX3663
Newmark	\$101,320.77	Path America Farmers Market, LP East West Bank XXXXXX3663
RafteryCRE Consulting	\$23,120.00	Path America Farmers Market, LP East West Bank XXXXXX3663
Markuslui and Associates	\$1,314.00	Path America Farmers Market, LP East West Bank XXXXXX3663
Parker Smith and Feek	\$10,146.70	Path America Farmers Market, LP East West Bank XXXXXX3663
Abossein Engineering	\$4,500.00	Path America Farmers Market, LP East West Bank XXXXXX3663
Ascent Law Group	\$19,232.50	Path America Farmers Market, LP East West Bank XXXXXX3663
Dargey Development		
AAT CC Bellevue, LLC	\$10,907.03	Dargey Development LLC East West Bank XXXXXX3589
Bacchus Holdings	\$8,596.77	Dargey Development LLC East West Bank XXXXXX3589
Level 3 Communications	\$584.38	Dargey Development LLC East West Bank XXXXXX3589
August 31, 2015 Employee Bonus as listed in Schedule 1	As listed in Schedule 1	Dargey Development LLC East West Bank XXXXXX3589

Payee	Amount	Account To Drawn From
September 1, 2015 Employee Severance	As listed in Schedule 1	Dargey Development LLC East West Bank XXXXXX3589
United States Treasury	\$29,418.22	Dargey Development LLC East West Bank XXXXXX3589
Total Benefit Solutions	\$5,858.37	Dargey Development LLC East West Bank XXXXXX3589
Delta Dental	\$783.05	Dargey Development LLC East West Bank XXXXXX3589
Washington State Department of Revenue	\$5,117.52	Dargey Development LLC East West Bank XXXXXX3589
Washington State Department of Revenue	\$9,913.37	Dargey Development LLC East West Bank XXXXXX3589
September 15, 2015 Payroll for the Dargey Development Employees	As Listed in Schedule 1	Dargey Development LLC East West Bank XXXXXX3589
United States Treasury	\$7,212.58	Dargey Development LLC East West Bank XXXXXX3589
ARC	\$369.65	Dargey Development LLC East West Bank XXXXXX3589
Mark Glass	\$278.60	Dargey Development LLC East West Bank XXXXXX3589
Path America		
United State Citizen and Immigration Services	\$6,260.00	Path America LLC East West Bank XXXXXX3648
September 15, 2015 Payroll for the Path America Employees	As Listed in Schedule 1	Path America LLC East West Bank XXXXXX3648
United States Treasury	\$1,907.34	Path America LLC East West Bank XXXXXX3648
Delta Dental	\$224.75	Path America LLC East West Bank XXXXXX3648
Total Benefit Solutions	\$1,452.34	Path America LLC East West Bank XXXXXX3648

Payee	Amount	Account To Drawn From
Toyota Financial Services	\$710.40	Path America LLC East West Bank XXXXXX3648
US Bank	\$1,181.80	Path America LLC East West Bank XXXXXX3648
AMDO Construction		
September 15, 2015 Payroll for the AMDO Construction	As Listed in Schedule 1	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
United States Treasury	\$1,705.46	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Washington State Support Registry (garnished child support payment)	\$575.00	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Total Benefit Solutions	\$722.28	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Delta Dental	\$104.70	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
State of Washington – Surety in Lieu of Bond	\$12,000.00	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Komatsu Financial	\$9,500.00	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Komatsu Financial	\$4,969.18	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Washington State Department of Revenue	\$21,981.27	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Washington State Department of Revenue	\$20,142.00	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
4T4 Trucking	\$48,228.75	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Cedar Mountain Reclamation	\$29,539.34	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Wes Roberts/Topgrade Topsoil	\$29,104.70	AMDO Construction, LLC AmericanWest Bank XXXXXX0766

Payee	Amount	Account To Drawn From
Cemex	\$4,014.02	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Modern Machinery	\$1,698.80	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Baker Corp	\$1,444.96	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
DeLage Landen	\$3,024.17	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
AT&T	\$111.86	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Cedar Mountain Reclamation	\$1,0409.60	AMDO Construction, LLC AmericanWest Bank XXXXXX0766
Potala Farms		
September 15, 2015 Payroll for the Potala Farms	As Listed in Schedule 1	Potala Farms, LLC AmericanWest Bank XXXXXX0933
Alicia Moreno	\$1,459.03	Potala Farms, LLC AmericanWest Bank XXXXXX0933
Employment Security Department	\$25.00	Potala Farms, LLC AmericanWest Bank XXXXXX0933
Department of Labor and Industries	\$225.17	Potala Farms, LLC AmericanWest Bank XXXXXX0933
Cairncross & Hemplemann	\$5,877.50	Potala Farms, LLC AmericanWest Bank XXXXXX0933
Fairchild Records Search	\$102.00	Potala Farms, LLC AmericanWest Bank XXXXXX0933
Path Othello		
Fuller Search Arch	\$74,229.90	Path Othello, LLC East West Bank XXXXXX3563
TRA	\$1,830.00	Path Othello, LLC East West Bank XXXXXX3563

Payee	Amount	Account To Drawn From
Raftery CRE LLC	\$34,252.50	Path Othello, LLC East West Bank XXXXXX3563
Fairchild Records Research	\$204.00	Path Othello, LLC East West Bank XXXXXX3563
Caron Architecture	\$214.58	Path Othello, LLC East West Bank XXXXXX3563
Ascent Law group	\$32,305.00	Path Othello, LLC East West Bank XXXXXX3563
Fuller Search Arch	\$152,388.76	Path Othello, LLC East West Bank XXXXXX3563
Caron Architecture	\$17,518.31	Path Othello, LLC East West Bank XXXXXX3563
KPFF	\$4,519.39	Path Othello, LLC East West Bank XXXXXX3563
Potala Shoreline		
Fairchild Records Search	\$204.00	Potala Shoreline, LLC East West Bank XXXXXX4785
BRH	\$2,834.00	Potala Shoreline, LLC East West Bank XXXXXX4785
Raftery CRE	\$15,463.75	Potala Shoreline, LLC East West Bank XXXXXX4785
City of Shoreline	\$476.25	Potala Shoreline, LLC East West Bank XXXXXX4785
Raftery CRE	\$700.00	Potala Shoreline, LLC East West Bank XXXXXX4785
Ascent Law group	\$25,320.00	Potala Shoreline, LLC East West Bank XXXXXX4785
Caron	\$152,643.47	Potala Shoreline, LLC East West Bank XXXXXX4785
National Barricade Co	\$660.07	Potala Shoreline, LLC East West Bank XXXXXX4785

Payee	Amount	Account To Drawn From
Seattle City Light	\$7.54	Potala Shoreline, LLC East West Bank XXXXXX4785
Everett Public Market Building		
Stancorp Mortgage (September Mortgage Payment)	\$14,720.82	Everett Public Market/Dargey Enterprises, LLC AmericanWest Bank XXXXXX1481
Snohomish County PUD	\$3,974.90	Everett Public Market/Dargey Enterprises, LLC AmericanWest Bank XXXXXX1481
Abbey Floor & Carpet	\$ 628.2	Everett Public Market/Dargey Enterprises, LLC AmericanWest Bank XXXXXX1481
Kings Heating	\$ 846.19	Everett Public Market/Dargey Enterprises, LLC AmericanWest Bank XXXXXX1481
Potala Village Kirkland		
Caron Architecture	\$2,255.17	Potala Village Kirkland, LLC AmericanWest XXXXXXXX0150
Earth Solutions	\$286.08	Potala Village Kirkland, LLC AmericanWest XXXXXXXX0150
National Construction Rentals	\$134.86	Potala Village Kirkland, LLC AmericanWest XXXXXXXX0150
CKC	\$3,150.00	Potala Village Kirkland, LLC AmericanWest XXXXXXXX0150
Dargey Personal Account		
Lobsang Dargey or Tami Dargey	\$9,634.81	Lobsang Dargey Bank of America XXXX1856

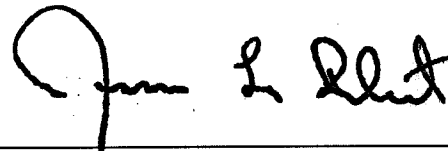
1 2. The Court ORDERS that Path America LLC is authorized to pay \$150,000.00
2 to Navigant Consulting for services provided in fulfillment of Section IX. of the TRO, from
3 the Potala Tower Seattle account at East West Bank, account no. XXXXXX2490.

4 3. The Court ORDERS that the TRO is hereby modified to allow Defendants,
5 Relief Defendants and affiliates to deposit, and the banks affected by the TRO to accept for
6 deposit, third party checks and cashiers' checks, in each and every account identified in or
7 affected by the TRO or any amendment thereto.

8 4. The Court finds that Schedule 1 hereto contains Personal Financial Information
9 of individual employees, including their identities and the amounts of their compensation, and
10 good cause exists to file Schedule 1 under seal. Accordingly, the Clerk of the Court is hereby
11 ORDERED to file Schedule 1 hereto under seal. Nothing in this Order shall prohibit any
12 parties hereto from disclosing Schedule 1 to financial institutions to the extent necessary to
13 facilitate the payment of payroll checks in accordance with this Order.

14 Except as set forth above, the TRO and all provisions set forth therein shall continue in
15 full force and effect unless otherwise ordered by this Court.

16
17 DATED this 18th day of September, 2015.

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21 _____
22 THE HONORABLE JAMES L. ROBART
23 UNITED STATES DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2015, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record.

DATED: September 18, 2015

ORRICK, HERRINGTON & SUTCLIFFE LLP

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